

## **DEPOSIT AGREEMENT**

THIS DEPOSIT AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and among 4-K's LLLP ("Seller"), Rocky Mountain Public Broadcasting, Inc. ("Buyer"), and Clifton Gardiner & Company, LLC, as earnest money deposit agent ("Deposit Agent"). Seller, Buyer and Deposit Agent are sometimes referred to herein, individually, as a "Party", and, collectively, as the "Parties".

WHEREAS, Buyer and Seller have entered into an Asset Purchase Agreement of even date herewith (the "Purchase Agreement") by which Seller has agreed to sell, assign, transfer, convey and deliver to Buyer, and Buyer has agreed to purchase from Seller, the Assets (as defined in the Purchase Agreement), including all applicable licenses of the Federal Communications Commission ("Commission"), all in accordance with and subject to the terms and conditions set forth in the Purchase Agreement and subject to the prior approval of the Commission; and

WHEREAS, Seller and Buyer have mutually agreed that Clifton Gardiner & Company, LLC shall act as Deposit Agent, and

WHEREAS, pursuant to the Purchase Agreement, Buyer is required to deliver a deposit of Forty Thousand Eight Hundred Dollars (\$40,800) in immediately available funds, subject to the terms of the Purchase Agreement and of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. Definitions. All terms contained in this Agreement shall have the meaning set forth in the Purchase Agreement.

2. Earnest Money Deposit Account.

2.1 Deposit. Buyer, upon Seller and Buyer both signing this Agreement and the Purchase Agreement, will wire transfer Forty Thousand Eight Hundred Dollars (\$40,800) in immediately available funds, as an earnest money deposit (the "Deposit"), to be held and disbursed by Deposit Agent as hereinafter set forth.

2.2 Investment. Deposit Agent shall hold the Deposit in a commercial bank reasonably acceptable to Buyer and Seller.

2.3 Release at Closing. Upon receipt of joint written instructions from Buyer and Seller stating that the Closing is occurring, Deposit Agent shall deliver the Deposit to Seller at the Closing by wire transfer of federal funds to an account which will be identified by Seller prior to the Closing Date. Alternatively, at Seller's direction, the Deposit may be applied to brokerage fees payable by Seller to Clifton Gardiner & Company, LLC.

2.4 Return to Buyer. Upon receipt of joint written instructions from Buyer and

Seller stating that the Purchase Agreement has been terminated pursuant to the applicable section thereof, Deposit Agent shall deliver the Deposit to Buyer by wire transfer of federal funds to an account which will be identified by Buyer.

2.5 Other Release. Upon receipt of other joint written instructions from Buyer and Seller, Deposit Agent shall deliver the Deposit in accordance with such other written instructions, signed by Buyer and Seller (including, without limitation, instructions stating that Seller shall receive all or a portion of the Deposit as liquidated damages pursuant to the applicable section of the Purchase Agreement).

2.6 Conflicting Demands. If any dispute arises among the Parties concerning this Agreement (including, but not limited to, a failure by Seller and Buyer to jointly agree with respect to a disbursement of the Deposit or an objection by either Seller or Buyer to any written directions regarding a disbursement of the Deposit), Deposit Agent may, unless Seller and Buyer jointly, in writing, direct it to the contrary, hold the Deposit pending receipt of a certified copy of a final judgment of a court of competent jurisdiction or, if an appeal therefrom has been timely made and jurisdiction assumed, the final judgment of the highest court to which such appeal has been made and jurisdiction assumed, instructing Deposit Agent on the disbursal of the Deposit. Deposit Agent shall comply with such court judgment. In the alternative, Deposit Agent may interplead the Deposit with the Maricopa County Superior Court in Phoenix, Arizona, pursuant to Rule 22, Arizona Rules of Civil Procedure. If Deposit Agent files an interpleader action, it shall be indemnified for all costs, including reasonable attorney's fees, in connection with such interpleader action, and shall be fully protected in suspending all or part of its activities under this Agreement until it receives a final judgment in the interpleader action.

2.7 Interest. Buyer shall be entitled to the interest, if any, earned on the Deposit, and such interest, if any, shall be paid to Buyer concurrently with the release of the Deposit pursuant to Section 2.3, 2.4, 2.5 or 2.6. However, Deposit Agent may deduct the actual bank charges for the account from the interest prior to remittance to the Buyer.

### 3. Concerning Deposit Agent.

3.1 Duties. Deposit Agent undertakes to perform all duties which are expressly set forth herein without compensation.

#### 3.2 Indemnification

3.2.1 Deposit Agent may rely upon and shall be protected in acting or refraining from acting upon any written notice, instructions or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Party or Parties.

3.2.2 Deposit Agent shall not be liable for any action taken by it in good faith and without negligence, and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its own

choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

3.2.3 Buyer and Seller hereby agree to indemnify Deposit Agent for, and to hold Deposit Agent harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of Deposit Agent, arising out of or in connection with Deposit Agent's entering into this Agreement and carrying out Deposit Agent's duties hereunder, including costs and expenses of successfully defending Deposit Agent against any claim of liability with respect thereto.

3.3 Other Matters. Deposit Agent reserves the right to resign as Deposit Agent at any time, provided thirty (30) days' prior written notice is given to the other Parties hereto. The other Parties jointly hereto reserve the right to remove Deposit Agent at any time, provided thirty (30) days' prior written notice is given to Deposit Agent. In the event of litigation or dispute by the Parties hereunder affecting its duties as Deposit Agent, Deposit Agent shall take no action until agreed to jointly by Seller and Buyer, or until Deposit Agent's receipt of an order of a court having jurisdiction.

4. Termination This Agreement and the obligations of Deposit Agent with regard to the Deposit shall be terminated upon the delivery made pursuant to Section 2.3, 2.4, 2.5 or 2.6 hereof, and may be terminated by written mutual consent signed by all Parties hereto.

5. Notice. All notices, demands, requests, or other communications which may be or are required to be given or made by any of the Parties to other Parties pursuant to this Agreement shall be in writing and shall be given in the manner set forth in the applicable section of the Purchase Agreement to the following addresses: (a) if to Buyer or Seller, to their respective addresses set forth in the Purchase Agreement; and (b) if to Deposit Agent:

Clifton Gardiner, Manager  
Clifton Gardiner & Company, LLC  
24645 S Augusta Ct  
Sun Lakes, AZ 85248

6. Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns as permitted hereunder. No person or entity other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto or their respective successors and assigns as permitted hereunder. None of the Parties to this Agreement may assign this Agreement or any rights hereunder without the prior written consent of all of the Parties hereto.

7. Entire Agreement; Amendment. This Agreement, together with the Purchase Agreement with respect to Seller and Buyer, contains the entire agreement among the

Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such matters. This Agreement may not be changed orally, but only by an instrument in writing signed by the Party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

8. Signature in Counterparts. This Agreement may be executed in separate counterparts, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original and all of which taken together constitute one and the same instrument.

9. Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

[The remainder of this page is intentionally blank.]

[Signature page to Deposit Agreement]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year shown below.

**BUYER:**

Rocky Mountain Public Broadcasting, Inc

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER:**

4-K's LLLP

\_\_\_\_\_

Date: \_\_\_\_\_

**DEPOSIT AGENT:**

**CLIFTON GARDINER & COMPANY, LLC**

By: \_\_\_\_\_

Clifton Gardiner, Manager

Date: \_\_\_\_\_